

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MATTHEW KOTILA, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CHARTER FINANCIAL PUBLISHING
NETWORK, INC.,

Defendant.

Case No. 1:22-cv-00704

Hon. Hala Y. Jarbou

CLASS ACTION

**PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT
PURSUANT TO RULES 23(b)(3) AND 55(b)(2) AND APPROVAL OF
PLAINTIFF'S PROPOSED CLASS NOTICE PLAN**

Plaintiff Matthew Kotila (“Plaintiff”), individually and on behalf of all others similarly situated, respectfully moves this Court for entry of a Default Judgment¹ against Defendant Charter Financial Publishing Network, Inc. (“Defendant”) pursuant to Rules 23(b)(3) and 55(b)(2), and approval of Plaintiff’s proposed notice plan, and states as follows:

1. On August 3, 2022, Plaintiff initiated this action by filing his Class Action Complaint against Defendant. ECF No. 1. The following day, the Clerk of Court issued a Summons in a Civil Action as to Defendant. ECF No. 4.

2. On August 11, 2022, service of the Complaint and Summons was effectuated on Defendant. *See* ECF No. 5 at 2, PageID.534.

3. Defendant failed to answer or respond to the Complaint or otherwise defend the action within twenty-one days from the date of service of the Summons and Complaint, as required under Federal Rule of Civil Procedure 12(a)(1)(A)(i).

4. Thus, on September 28, 2022, Plaintiff filed an Application for the Clerk of Court to enter a default against Defendant pursuant to Federal Rule of Civil Procedure 55(a). ECF No. 7.

5. On October 19, 2022, the Clerk of Court issued an Entry of Default against Defendant pursuant to Rule 55(a). ECF No. 12.

¹ Calculation of the precise value of the Judgment shall be deferred until after the notice period.

6. On December 2, 2022, Plaintiff filed a Motion for Class Certification Pursuant to Rules 23(a) & 23(b)(3), and for Leave to Take Discovery Pursuant to Rule 55(b)(2). ECF No. 13.

7. On May 12, 2023, the Court issued its Opinion and Order on Plaintiff's Motion for Class Certification, conditionally granting the motion to certify a class and directing plaintiff to provide a more specific proposed class definition within seven days. ECF Nos. 14, 15.

8. On May 19, 2023, Plaintiff filed a supplemental brief, providing a more specific class definition and requesting leave to take discovery. ECF No. 16.

9. On June 5, 2023, the Court issued an Order certifying the class, allowing plaintiff to conduct discovery, and directing plaintiff to file a motion for default judgment by August 16, 2023. ECF No. 17.

10. The Court certified the following class under Rule 23(b)(3) of the Federal Rules of Civil Procedure:

Plaintiff, as well as every other resident of Michigan who subscribed to any of Defendant's publications before July 31, 2016, and whose name together with the name of the publication(s) to which they subscribed were disclosed by Defendant (or an employee or agent of Defendant acting on Defendant's behalf) at any time between April 25, 2016, and July 30, 2016, to any third party without the consent of the subscriber.

Id., PageID.658–659.

11. Plaintiff proceeded by engaging in the discovery process. In furtherance of these discovery efforts, certain third-parties requested a confidentiality order be entered in this case so that they would be permitted to disclose information about Class members. ECF No. 18; *see also* ECF No. 24.

12. Discovery has revealed that Defendant has wrongfully disclosed the subscription information of Class members; Plaintiff has determined that there are at least 3,416 members of the Class, or Michigan subscribers to Defendant's *Financial Advisor* magazine as of July 31, 2016, who had their name and that they subscribed to *Financial Advisor*, non-consensually disclosed to a third-party between April 25, 2016 and July 31, 2016.

13. Plaintiff further requests that this Court approve Plaintiff's proposed class notice plan (as described in Plaintiff's supporting brief) directed to the identified Class members, and direct distribution of this notice.

14. Finally, Plaintiff requests that the Court enter its Default Judgment on a deferred basis, following the completion of the notice period.

15. Plaintiff seeks Default Judgment in the amount of \$5,000.00 per Class member, the statutory penalty provided by the Preservation of Personal Privacy Act, PPPA § 5(a) (*see* ECF No. 1, PageID.24), multiplied by the number of Class members who do not choose to opt out of the Class, again, which will be determined following the notice period.

In support of this Motion, Plaintiff relies on the contents of this Motion, the Brief in Support, and the accompanying exhibits. A proposed order—granting the request for approval of Plaintiff’s class notice plan and entry of Default Judgment as to Defendant, with the precise value of the Judgment deferred until following the notice period—is attached as **Exhibit 1**.

Dated: August 16, 2023

Respectfully Submitted,

/s/ E. Powell Miller

E. Powell Miller (P39487)

THE MILLER LAW FIRM, P.C.

950 W. University Drive, Suite 300

Rochester, MI 48307

Tel: 248-841-2200

epm@millerlawpc.com

Joseph I. Marchese

Philip L. Fraietta

BURSOR & FISHER, P.A.

888 Seventh Avenue

New York, New York 10019

Tel: 646.837.7150

jmarchese@bursor.com

pfraietta@bursor.com

Frank S. Hedin

David W. Hall

HEDIN HALL LLP

1395 Brickell Avenue, Suite 1140

Miami, Florida 33131

Tel: 305.357.2107

fhedin@hedinhall.com

dhall@hedinhall.com

Counsel for Plaintiff and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 16, 2023, a true and correct copy of the foregoing was served by electronic service via the Court's CM/ECF service on all counsel or parties of record on the service list in the above-entitled action. I further certify that a true and correct copy of the foregoing is being sent this same date to the persons listed below via prepaid first-class U.S. Mail:

- Charter Financial Publishing Network, Inc., c/o Cogency Global, 850 New Burton Road, Suite 201, Dover, DE 19904

/s/ E. Powell Miller
E. Powell Miller